IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 262 OF 2006

SHRI SANJAY ALIAS VASTUPAL DATTA KHORJUVEKAR, SIOLIM, BARDEZ GOA ....Petitioner

Versus

SHRI RAJENDRA NARAYAN KAREKAR AND ANR., ...Respondents

Mr. S.D. Lotlikar, Sr. Advocate with Mr. S.Y. Thaly, Advocate for the Petitioner.
Mr. Ashwin D. Bhobe, For Respondent No. 1.
Mr. N. Costa Frias, Advocate for Respondent No.2.

Coram:- SMT. RANJANA DESAI, J.

Date:- 28th June, 2006

P.C.:

The original plaintiff has challenged in this Writ Petition order dated 06.06.2006 passed by the Civil Judge Senior Division, Panaji in SCS 36/05/B. By the impugned order the amendment application filed by the plaintiff has been rejected.

2. It appears that the plaintiff has filed a suit inter alia seeking relief of specific performance of the agreement of sale dated 26.11.2004 and permanent injunction restraining the respondent from interfering with the possession of the suit shop or from dispossessing him. In that suit the plaintiff preferred the instant application for amendment. By way of amendment the plaintiff wants to introduce the following :-

" In the alternative Plaintiff is entitled to return/refund of total amount of Rs.11,60,000/- (Rupees Eleven lakh sixty thousand only) paid to the defendants as a part payment towards the sale price of the suit shop, in various instalments and on different dates as mentioned in paragraph 3 &

6 of the plaint, with the interest at 18% p.a. from the respective date of effecting payments and further sum of Rs.10,000,00/- (Rupees ten lakh only) as and by way of additional damages, with interest at 12% p.a. from the date of filing of the suit till the date of payment. "

3. The trial Court has rejected the amendment application on the ground that the suit shop has been sold by public auction by the Saraswat Cooperative Bank Ltd. Panaji, Goa and therefore this subsequent event has made the suit of the plaintiff for specific performance and injunction infructuous. The learned Judge has further observed that once the suit has become infructuous there is no question of any such proposed amendment based on the said subsequent event being necessary, to deal with the material controversy in the suit. He has further added that by way of proposed amendment, plaintiff is seeking to add alternative relief of recovery of damages which could be the only relief available to the plaintiff and it cannot be termed as alternative relief. According to the learned Judge if the amendment is granted the nature of the suit will totally change.

4. I have heard the learned counsel for the petitioner and the learned counsel appearing for the respondent. Learned counsel for the petitioner contended that in view of Section 21 of the Specific Relief Act the learned Judge could not have rejected the amendment. The learned counsel for the respondent reiterated the reasoning adopted by the learned trial Judge. He contended that no interference is necessary with the impugned order.

5. It is well settled that while dealing with amendment applications the Courts have to be liberal. This is intended to prevent multiplicity of proceedings. In the present case, in my opinion, in view of sub-section (5) of Section 21 of the Specific Relief Act the trial Court had no discretion to reject the amendment application. Besides the amendment application does not preclude the defendants from raising all contentions in the additional written statement which they may have to file.

6. In the circumstances the impugned order is quashed and set aside. The amendment application of the plaintiff is granted. Amendment to be carried out within two days. Needless to say that the defendants will be at liberty to file additional written statement.

Writ Petition disposed of in the aforestated terms.

SMT. RANJANA DESAI, J.

sl.